Supreme Court of the United States.

Nos. 263 and 264.—October Term, 1906.

263 The United States, Appellant,
vs.
The William Cramp & Sons Ship & Engine Building Company.

The William Cramp & Sons Ship & Engine Building Company, Appellant,
264 *vs.*
The United States.

Appeals from the Court of Claims.

[May 13, 1907.]

On November 19, 1890, the William Cramp & Sons Ship & Engine Building Company entered into a contract with the United States to construct what was called "Coast-line Battleship No. 1," afterwards known as the battle ship Indiana, for the sum of $3,020,000, the ship to be completed and ready for delivery to the United States within three years from the date of the contract. As a matter of fact the vessel was not completed and delivered until November 19, 1895, but as the delay was occasioned by the United States no damages were recoverable from the building company on account thereof. On August 10, 1897, the company commenced this action in the Court of Claims to recover the sum of $480,231.90. The elements of its claim are thus stated in its petition:

For time of organization and plant lost in waiting for armor, materials, etc., to be furnished by United States	$144,379.50
For special wharfage, 730 days, at 1 cent per ton per day	74,825.00
For general care and maintenance of vessel, including coal, firemen, engineers, watchman, canvas awnings, wooden covers, keeping clean, removing snow, dust, etc., extra painting, tug hire, moving derrick, etc., 730 days, at $135 per day	98,550.00
Additional cost of insurance	34,462.55
Interest on money borrowed caused by delays of United States which prolonged final settlement	60,499.91
Extra trial trip made necessary by construction and completion of vessel being delayed by United States	17,514.94
For loss due to running the official trial of "Indiana" with a foul bottom, as owing to the delay caused in the completion of the vessel it was impossible to clean and paint the bottom	50,000.00
Total	$480,231.90

On May 10, 1894, as appears from the findings made by the Court of Claims, an agreement was made between the parties by which moneys not then due by the terms of the original contract were paid, the stipulation in this new agreement being:

"But such payment shall not be made until the party of the first part has given bond with approved security conditioned for the return to the party of the second part of the amount so paid, upon demand being made by the Secretary of the Navy therefor, for indemnity of the party of the second part against loss or injury by reason of such payment, and in consideration of such advance payment the party of the first part hereby releases the party of the second part from all and every claim for loss or damage hitherto sustained by reason of any failure on the part of the party of the second part to comply with its contract or on account of any delay hitherto occasioned by the action of said party of the second part."

The time intervening between this agreement and the final completion and delivery of the vessel was one year six months and nine days, and that time was made the basis for the computation of damages, as will appear hereafter.

On May 18, 1896, after the completion and delivery of the vessel, the balance of the money due on the contract was paid, and a release and receipt executed by the building company in the following terms:

"Whereas, by the eleventh clause of the contract dated November 19, 1890, by and between The William Cramp and Sons Ship and Engine Building Company, a corporation created under the laws of the State of Pennsylvania, and doing business at Philadelphia, in said State, represented by the president of said company, party of the first part, and the United States, represented by the Secretary of the Navy, party of the second part, for the construction of a seagoing coast-line battle ship of about ten thousand tons displacement, which for the purpose of said contract is designated and known as 'Coast-line battle ship No. 1,' it is agreed that a special reserve of sixty thousand dollars ($60,000) shall be held until the vessel shall have been finally tried; provided that such final trial shall take place within five months from and after the date of the preliminary or the conditional acceptance of the vessel; and

"Whereas by the sixth paragraph of the nineteenth clause of said contract it is further provided that when all the conditions, covenants, and provisions of said contract shall have been performed and fulfilled by and on the part of the party of the first part, said party of the first part shall be entitled, within ten days after the filing and acceptance of its claim, to receive the said special reserve or so much thereof as it may be entitled to on the execution of a final release to the United States in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of said contract; and

"Whereas the final trial of said vessel was completed on the eleventh day of April, 1896; and

"Whereas all the conditions, covenants and provisions of said contract have been performed and fulfilled by and on the part of the party of the first part;

"Now, therefore, in consideration of the premises, the sum of forty-one thousand one hundred and thirty-two dollars and eighty-six cents ($41,132.86), the balance of the aforesaid special reserve ($60,000), to which the party of the first is entitled, being to me in hand paid by the United States, represented by the Secretary of the Navy, the receipt

whereof is hereby acknowledged, The William Cramp and Sons Ship and Engine Building Company, represented by me, Charles H. Cramp, president of said corporation, does hereby for itself and its successors and assigns, and its legal representatives, remise release and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims and demands whatsoever, in law or in equity, for or by reason of or on account of the construction of said vessel under the contract aforesaid.

"In witness whereof I have hereunto set my hand and affixed the seal of The William Cramp & Sons Ship and Engine Building Company this eighteenth day of May, A. D. 1896.

[SEAL.] CHAS. H. CRAMP, *President.*

Attest: JOHN DOUGHERTY, *Secretary.*"

The Court of Claims found for the claimant in the following items and amounts:

The reasonable value for the use of the claimant's yard, machinery and tools, and for superintendence in the construction of the vessel, including the general upkeep of the yard chargeable to the Indiana, $3,000 per month, making	$54,887.67
The reasonable cost of the proper care and protection of the vessel during the two years' delay, including expense of cleaning the bottom, furnishing material and painting, temporary awnings and tents over caps left for the introduction of turrets, additional scaling to remove rust before painting, electric lighting, keeping up steam to prevent freezing of valves, wetting down decks, going over machinery, and keeping vessel free from snow, dust, ice and debris, from May 10, 1894	36,591.78
Wharfage from May 10, 1894, including the dredging of a basin to accommodate the vessel	17,808.00
The proportionate expense, for the period from May 10, 1894, of the cost of insurance during the two years' delay	26,272.55
	$135,560.00

And rendered judgment against the Government for $135,560. From this judgment both parties appealed.

Mr. Justice BREWER delivered the opinion of the Court.

This case turns on the release executed by the building company on May 18, 1896. It is contended by the claimant that it applies simply to claims springing out of the construction of the vessel, and therefore has no application to the matters for which the judgment was rendered against the Government. The word "construction," the company says, is limited to the mere matter of building; that is, the furnishing of materials, the doing of work, and does not include delays or other matters outside the building of the vessel.

To rightly understand the scope of this release we must consider the conditions of the contract, and especially the clause in it which calls for a release. The contract was a large one, the price to be paid for the work

and material being over $3,000,000, and the contract was evidently designed to cover all contingencies. Provision was made for changes in the specifications, for penalties on account of delays of the contractor, deductions in price on certain conditions, approval of the work by the Secretary of the Navy, forfeiture of the contract, with authority to the Secretary to complete the vessel. The last paragraph contains the stipulations as to the amounts and times of payment with authority for increase of the gross amount upon certain conditions. The sixth clause of this paragraph makes special provision for the last payment, to be made "when all the conditions, covenants, and provisions of said contract shall have been performed and fulfilled by and on the part of the party of the first part" and "on the execution of a final release to the United States in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of said contract." Evidently the parties contemplated and specially provided by this stipulation that the whole matter of the contract should be ended at the time of the final release and the last payment. That which was to be released was "all claims of any kind or description under or by virtue of said contract." Manifestly included within this was every claim arising not merely from a change in the specifications, but also growing out of delay caused by the Government. The language is not alone "claims under," but "claims by virtue" of the contract—"claims of any kind or description." All the claims for which allowances were made in the judgment of the Court of Claims come within one or the other of these clauses. It may be that, strictly speaking, they were not claims under the contract, but they were clearly claims by virtue of the contract. Without it no such claims could have arisen. Now it having been provided in advance that the contract should be closed up by the execution of a release of this kind it cannot be that the company, when it signed the release, understood that some different kind of release was contemplated. It must have understood that it was the release required by the contract—a release intended to be of all claims of any kind or description under or by virtue of the contract, and that the form of words which the Secretary had approved was used to express that purpose. With that release stipulated for in the contract the company signed the instrument of May 18, 1896, which in terms purported to "remise, release and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims and demands whatsoever, in law or in equity, for or by reason of or on account of the construction of said vessel under the contract aforesaid." Now whatever limitation may be placed upon the words "for" or "on account of" the construction the provision for the release of all claims and demands whatsoever, "by reason of the construction of the

vessel under the contract aforesaid," is a recognition of the contract, and includes claims which arise by reason of the construction of the vessel under it. "By reason of" may well be considered as equivalent to "by virtue of." It is only by reason of the performance of the contract in the construction of the vessel that these claims arise. But for the contract, and the construction of the vessel under it, there would be no such claims. No payment of moneys not due is necessary to sustain this release. It is under seal, and the contract is itself full consideration. As of significance it must be borne in mind that the release referred specifically to the provisions in the sixth paragraph of the nineteenth clause of the contract which provided for the character of the release. Indeed the general language of the release itself and the number of words of description in it show that it was the intent of the Secretary of the Navy to have a final closing of all matters arising under or by virtue of the contract.

Stipulations of this kind are not to be shorn of their efficiency by any narrow, technical and close construction. The general language "all and all manner of debts," &c., indicates an intent to make an ending of every matter arising under or by virtue of the contract. If parties intend to leave some things open and unsettled their intent so to do should be made manifest. Here was a contract involving three millions of dollars, and after the work was done, the vessel delivered and accepted and this release entered, claims are presented amounting to over $500,000. Surely the parties never intended to leave such a bulk of unsettled matters. As bearing upon this matter it may be noticed that while the release was signed and the contract between the building company and the Government closed on May 18, 1896, this action was not brought until August 10, 1897, nearly a year and a quarter thereafter.

We are of opinion that the parties by the release of May 18, 1896, which was executed in performance of the requirements of the original contract, settled all disputes between the parties as to the claims sued upon.

The judgment of the Court of Claims is reversed and the case remanded with instructions to enter a judgment on the findings for the defendant.

Mr. Justice McKenna and Mr. Justice Moody took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.